

AN ACT

RELATING TO TAXATION; PROVIDING FOR PARTICIPATION IN
NEGOTIATIONS ON THE STREAMLINED SALES TAX AGREEMENT; CREATING
REQUIREMENTS FOR PARTICIPATION IN THE AGREEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Streamlined Sales and Use Tax Administration Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds
that a simplified sales tax and use tax system that treats
transactions in a competitively neutral manner will strengthen
and preserve sales taxes and use taxes as vital revenue
sources for this state and its local governments and will help
preserve the fiscal sovereignty of this state. The
legislature also finds that such a system will substantially
reduce the administrative burdens of collection for sellers.
While states have the sovereign right to set their own tax
policies, states should cooperatively develop a streamlined
sales tax and use tax system that is simplified, uniform and
fair.

Section 3. DEFINITIONS.--As used in the Streamlined
Sales and Use Tax Administration Act:

A. "agreement" means the streamlined sales and use
tax agreement;

B. "certified automated system" means software

certified jointly by member states to:

(1) calculate the sales tax imposed by each jurisdiction on a transaction;

(2) determine the amount of tax to remit to the appropriate state; and

(3) maintain a record of the transaction;

C. "certified service provider" means an agent that performs all of the sales tax functions of a seller and that is certified jointly by member states to perform all of the sales tax functions of the seller;

D. "member state" means a state of the United States that enters into the agreement with another state and the District of Columbia if it enters into the agreement with another state;

E. "person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation and any other legal entity;

F. "sales tax" means the gross receipts tax levied pursuant to the Gross Receipts and Compensating Tax Act or a tax imposed by a state on the sale of goods or services;

G. "seller" means a person making sales, leases and rentals of personal property and services; and

H. "use tax" means the compensating tax levied pursuant to the Gross Receipts and Compensating Tax Act.

Section 4. AUTHORITY TO ENTER AGREEMENT.--

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A. The secretary of taxation and revenue may enter into the agreement with one or more member states to simplify and modernize sales tax and use tax administration and to reduce the burden of tax compliance for sellers.

B. The secretary of taxation and revenue is authorized to:

(1) act jointly with member states to establish standards for a certified automated system and establish performance standards for multistate sellers pursuant to the agreement;

(2) take actions reasonably required to implement the provisions of the Streamlined Sales and Use Tax Administration Act; and

(3) adopt rules with member states pursuant to the agreement.

C. The secretary of taxation and revenue or the secretary's designee is authorized to represent this state before member states.

Section 5. RELATIONSHIP TO STATE LAW.--A provision of the agreement does not invalidate or amend any provision of state law. Implementation of a condition of the agreement shall be adopted by the legislature.

Section 6. AGREEMENT REQUIREMENTS.--The secretary of taxation and revenue shall not enter into the agreement unless the agreement:

A. sets restrictions to achieve more uniform state tax rates by limiting:

- (1) the number of member state tax rates;
- (2) the application of maximums on the amount of member state taxes due on transactions; and
- (3) the application of thresholds on the application of member state taxes;

B. establishes uniform standards for:

- (1) sourcing transactions to taxing jurisdictions;
- (2) administering exempt sales; and
- (3) providing allowances that a seller can receive for bad debts;

C. requires member states to develop and adopt uniform definitions of sales tax and use tax terms that enable the member states to make policy choices consistent with the definitions;

D. provides for a certified automated system that allows a seller to register to collect and remit sales taxes and use taxes for each member state;

E. provides that registration with the certified automated system and the collection of a sales tax and a use tax in a member state will not be used to determine if the seller has a nexus with a member state for tax purposes;

F. provides for reduction of the burden of

complying with local sales taxes and use taxes by:

(1) restricting variances between the member state and local tax bases;

(2) requiring each member state to administer the sales tax and use tax levied by a local jurisdiction within the member state so that a seller collecting and remitting the taxes will not be required to register or file a return with, remit funds to or be subject to an independent audit from a local taxing jurisdiction;

(3) restricting change in each local sales tax rate and use tax rate and setting an effective date for a change in the boundaries of a local taxing jurisdiction; and

(4) providing notice of a change in each local sales tax rate and use tax rate and of a change in the boundaries of a local taxing jurisdiction;

G. outlines monetary allowances provided by member states to sellers and certified service providers;

H. requires each state to certify compliance with the terms of the agreement before becoming a member state and to maintain compliance with provisions of the agreement pursuant to the law of the member state while a member state;

I. requires each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and

J. provides for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives with which to consult with respect to the administration of the agreement.

Section 7. MEMBER STATES.--The agreement is an accord among member states in furtherance of their governmental functions. The agreement permits each member state to establish and maintain a cooperative, uniform, simplified system to apply sales taxes and use taxes pursuant to the law of the member state.

Section 8. LIMITED BINDING AND BENEFICIAL EFFECT.--

A. The agreement binds and benefits only this state and other member states. Only a member state is an intended beneficiary of the agreement. A benefit to a person other than a member state is established by the law of this state and member states and not by the terms of the agreement.

B. A person shall not:

(1) have a cause of action or a defense pursuant to the agreement; and

(2) challenge an action or inaction of a department, agency, political subdivision or instrumentality of this state on the grounds that the action or inaction is not consistent with the agreement.

C. A law of this state or the application of the law is valid despite the inconsistency of the law or its

application with the agreement.

Section 9. LIABILITY.--

A. A certified service provider is liable for sales taxes and use taxes due from each member state on each sales transaction that it processes for the seller, except as otherwise provided by this section. A seller that contracts with the certified service provider is not liable to this state for sales tax or use tax due on a transaction processed by the certified service provider unless the seller misrepresents the type of item it sells or commits fraud. In the absence of probable cause that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on transactions processed by the certified service provider. A seller is subject to audit for a transaction not processed by the certified service provider. Member states acting jointly may:

(1) audit data pertaining to the seller that is stored in the certified automated system; and

(2) review procedures of the seller to determine if the certified automated system functions properly and the extent to which the transactions of the seller are processed by this certified service provider.

B. A certified service provider is responsible for the proper functioning of a certified automated system and is liable to this state for underpayments of tax attributable to

system errors. A seller that uses a certified automated system is liable to this state for reporting and remitting tax.

C. A seller that has a proprietary system for determining the amount of tax due on a transaction and has agreed to establish a performance standard for the system is liable for failure of the system to meet the standard.